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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 AHMAD MALIK BOWMAN,
10 Plaintiff,

Case No. 2:23-cv-1741-BNW

11 v.

ORDER

12 KILOLO KIJAKAZI,
13 Defendant.
14

15 Presently before the Court is *pro se* plaintiff Ahmad Malik Bowman's application to
16 proceed *in forma pauperis*. ECF No. 1.

17 **I. In Forma Pauperis Application**

18 Bowman has submitted the declaration required by 28 U.S.C. § 1915(a) showing an
19 inability to prepay fees and costs or give security for them. ECF No. 1. Accordingly, Plaintiff's
20 request to proceed *in forma pauperis* will be granted. The Court will next screen the complaint.
21 ECF No. 1-1.

22 **II. Screening the Complaint**

23 **A. Standard of Review**

24 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
25 under 28 U.S.C. § 1915(e)(2).¹ In screening the complaint, a court must identify cognizable
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27 ¹ Although § 1915 largely concerns prisoner litigation, § 1915(e) applies to all *in forma pauperis*
28 proceedings. *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C.
§ 1915(e)(2)(B) are not limited to prisoners[.]”).

1 claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may
2 be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
3 § 1915(e)(2).

4 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for
5 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
6 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient
7 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft*
8 *v. Iqbal*, 556 U.S. 662, 678 (2009). In considering whether the complaint is sufficient to state a
9 claim, all allegations of material fact are taken as true and construed in the light most favorable to
10 the plaintiff. *Wyler Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998)
11 (citation omitted). Although the standard under Rule 12(b)(6) does not require detailed factual
12 allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v.*
13 *Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
14 insufficient. *Id.* Unless it is clear that the complaint’s deficiencies could not be cured through
15 amendment, a plaintiff should be given leave to amend the complaint with notice regarding the
16 complaint’s deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

17 Even following the U.S. Supreme Court’s holdings in *Twombly* and *Iqbal*, the Court has
18 an “obligation . . . where the petitioner is *pro se* . . . to construe the pleadings liberally and to
19 afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
20 2010) (internal quotations and citation omitted). But “the liberal pleading standard . . . applies
21 only to a plaintiff’s factual allegations.” *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989); *see*
22 *also Bruns v. Nat’l Credit Union Admin.*, 12 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v.*
23 *Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)) (noting that a liberal construction may not
24 be used to supply an essential element of the claim absent from the complaint).

25 In the context of social security appeals, if a plaintiff’s complaint challenges a decision by
26 the Social Security Administration, the plaintiff must exhaust administrative remedies before
27 filing a lawsuit. *See* 42 U.S.C. § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833
28 (9th Cir. 1989) (per curiam) (“Section 405(g) provides that a civil action may be brought only

1 after (1) the claimant has been party to a hearing held by the Secretary, and (2) the Secretary has
2 made a final decision on the claim”). Generally, if the SSA denies a claimant’s application for
3 disability benefits, the claimant may request reconsideration of the decision. If the claim is denied
4 at the reconsideration level, a claimant may request a hearing before an administrative law judge
5 (“ALJ”). If the ALJ denies the claim, a claimant may request review of the decision by the
6 Appeals Council. If the Appeals Council declines to review the ALJ’s decision, a claimant may
7 then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

8 Once a plaintiff has exhausted administrative remedies, he may obtain judicial review of
9 an SSA decision denying benefits by filing suit within 60 days after notice of a final decision. *Id.*
10 An action for judicial review of a determination by the SSA must be brought “in the district court
11 of the United States for the judicial district in which the plaintiff resides.” *Id.* The complaint
12 should state the nature of plaintiff’s disability, when plaintiff claims he became disabled, and
13 when and how he exhausted his administrative remedies. The complaint should also contain a
14 plain, short, and concise statement identifying the nature of plaintiff’s disagreement with the
15 determination made by the SSA and show that plaintiff is entitled to relief.

16 A district court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted
17 his administrative remedies and timely filed a civil action. However, judicial review of the
18 Commissioner’s decision to deny benefits is limited to determining: (a) whether there is
19 substantial evidence in the record as a whole to support the findings of the Commissioner, and
20 (b) whether the correct legal standards were applied. *Morgan v. Commissioner of the Social*
21 *Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

22 **B. Analysis**

23 Here, Bowman alleges that the Administrative Law Judge (“ALJ”) denied his application
24 for supplemental security income on August 17, 2022. ECF No. 1-1 at 2. He further alleges that
25 on September 14, 2023, the Appeals Council denied review of the ALJ’s decision. *Id.* at 3.
26 Plaintiff then filed this action on October 26, 2023. Thus, liberally construing Plaintiff’s
27 complaint, it appears that he exhausted the administrative remedies and timely commenced this
28 action.

1 Additionally, the complaint indicates the nature of Bowman's disability and its alleged
2 onset date. *Id.* at 2. It also indicates that Plaintiff resides within the District of Nevada. *Id.* at 1.

3 Finally, the complaint includes sufficient facts to state a claim for relief, alleging that the
4 ALJ did not "state clear and convincing reasons for rejecting the symptom and limitation
5 testimony that Bowman could not engage in full-time competitive employment" and that the
6 ALJ's "finding of the ability to perform work is not supported by substantial evidence because the
7 residual functional capacity is inconsistent with the record as a whole." *Id.* at 2-3.

8 Accordingly, Plaintiff appears to state a cognizable claim upon which relief can be
9 granted.

10 **IT IS THEREFORE ORDERED** that:

11 1. Plaintiff's request to proceed *in forma pauperis* (ECF No. 1) is
12 GRANTED. Plaintiff will not be required to pay the filing fee of \$400.00.

13 2. Plaintiff is permitted to maintain this action to conclusion without the
14 necessity of prepayment of any additional fees or costs or giving security for them. This Order
15 granting leave to proceed *in forma pauperis* does not extend to the issuance of subpoenas at
16 government expense.

17 3. The Clerk of Court must file the complaint (ECF No. 1-1).

18 4. The Clerk of Court must serve the Commissioner of the Social Security
19 Administration by sending a copy of the summons and complaint by certified mail to: (1) Office
20 of the Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear St., Suite
21 800, San Francisco, California 94105-1545; and (2) the Attorney General of the United States,
22 Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

23 5. The Clerk of Court must issue summons to the United States Attorney for
24 the District of Nevada and deliver the summons and complaint to the U.S. Marshal for service.

25 6. From this point forward, Plaintiff must serve on Defendant or, if
26 appearance has been entered by an attorney, on the attorney, a copy of every pleading, motion, or
27 other document submitted for consideration by the Court. Plaintiff must include with the original
28 paper submitted for filing a certificate stating the date that a true and correct copy of the

1 document was personally served or sent by mail to Defendant or counsel for Defendant. The
2 Court may disregard any paper received by a district judge or magistrate judge that has not been
3 filed with the Clerk, and any paper received by a district judge, magistrate judge, or the Clerk that
4 fails to include a certificate of service.

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6 DATED: November 13, 2023

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8 BREND A WEKSLER
9 UNITED STATES MAGISTRATE JUDGE
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